

Via EFS
Date of Deposit: November 20, 2009

Attorney Docket No.: 25681-502 P

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT :	Dotan <i>et al.</i>	CONFIRMATION NO. :	7497
SERIAL NUMBER :	10/728,227	EXAMINER :	James Leslie Grun
FILING DATE :	December 3, 2003	ART UNIT :	1641
PATENT NO. :	7,592,150	ISSUE DATE :	September 22, 2009
FOR :	METHOD FOR DIAGNOSING DISEASES BASED ON LEVELS OF ANTI-GLYCAN ANTIBODIES		

Mail Stop: Issuc Fee
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT
UNDER 37 C.F.R. §1.705(d)

The above-identified application issued on September 22, 2009. The total patent term adjustment calculated by the United States Patent and Trademark Office under 35 U.S.C. §154(b) is 412 days, which is recited on the face of the above-referenced patent. Applicants petition the U.S. Patent and Trademark Office for reconsideration of the patent term adjustment calculation to **815 days**, based on the facts provided herein. This Request is submitted in view of the decision by the U.S. District Court decision in *Wyeth v. Dudas* (D.D.C. 2008) on September 30, 2008.

This patent application was filed on December 3, 2003, and is therefore subject to the patent term adjustment procedures set forth in 37 C.F.R. §§ 1.702 to 1.705 for applications filed on or after May 29, 2000.

On March 18, 2004, the Office mailed a Notice to File Missing Parts of Non-Provisional Application.

On June 18, 2004, Applicants filed a Response to the Notice to File Missing Parts. This response was received by the Office within three-months of the mailing date of the action.

On September 22, 2006, the Office mailed a Restriction/Election-of-Species. The action was mailed 596 days after the fourteen month requirement for mailing of the first action after the

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date on which the application was filed under 35 U.S.C. §111(a). As shown in Exhibit A, the number of days of Patent Term Adjustment accounts for the 596 day Office delay.

On October 20, 2006, Applicants filed a Response to Election-of-Species/Restriction. This response was received by the Office within three-months of the mailing date of the action.

On January 5, 2007, the Office mailed a Non-Final Office Action. This Action was mailed within the four months of the filing of the reply filed under 35 U.S.C. §132.

On April 5, 2007, Applicants filed a Response to the Non-Final Office Action. This response was received by the Office within three-months of the mailing date of the action.

On July 11, 2007, the Office mailed a Final Office Action. This Action was mailed within the four months of the filing of the reply filed under 35 U.S.C. §132.

On January 11, 2008, Applicants filed a Request for Continued Examination with a Petition for a three-month extension of time. This response was filed 92 days after the date that is three months after the mailing date of the Final Office Action. As shown in Exhibit A, the number of days of Patent Term Adjustment accounts for the 92 day Applicant delay.

On March 5, 2008, the Office mailed a Non-Final Office Action. This Action was mailed within the four months of the filing of the reply filed under 35 U.S.C. §132.

On September 5, 2008, Applicants filed a Response to the Non-Final Office Action with a Petition for a three-month extension of time. This response was filed 92 days after the date that is three months after the mailing date of the Final Office Action. As shown in Exhibit A, the number of days of Patent Term Adjustment accounts for the 92 day Applicant delay.

On December 23, 2008, the Office mailed a Non-Final Office Action. This Action was mailed within the four months of the filing of the reply filed under 35 U.S.C. §132.

On March 18, 2009, Applicants filed a Response to the Non-Final Office Action. This response was received by the Office within three-months of the mailing date of the action.

On March 31, 2009, the Office mailed the Notice of Allowance/Notice of Allowability, and the Determination of Patent Term Adjustment for this application. This Action was mailed within the four months of the filing of the reply filed under 35 U.S.C. §132.

On June 30, 2009, Applicants paid the Issue Fee. This payment was received within three months of the mailing date of the Notice.

On September 22, 2009 the patent issued. The patent issued within four months of the paying the issue fee under 35 U.S.C. §151.

According to the provisions of 37 C.F.R. §1.702(b), Applicants are entitled to Patent Term Adjustment for the failure of the Office to issue the patent within three years after the date on which the application was filed. Under 37 C.F.R. §1.702(b)(1)-(5), Applicants are entitled to this adjustment for any time other than any time consumed by continued examination of the application requested by the applicant under section 132(b), beginning on the date on which a Request for Continued Examination was filed, January 11, 2008, and ending on the date the patent issues.

The amount of the Adjustment under 37 C.F.R. §1.702(b) is calculated from December 4, 2006 (*i.e.*, the day after the date that is three years from the date that the application was filed), through and including January 10, 2008, the day before the date the Request for Continued Examination was filed on January 11, 2008, subtracting only time legitimately attributable to applicant delay. Applicants submit that the Adjustment under 37 C.F.R. §1.702(b) is 403 days.

Applicants have calculated the Patent Term Adjustment based on 37 C.F.R. 1.702(a), 37 C.F.R. 1.702(b) and 37 C.F.R. 1.704 through the Issue date of the Patent. Applicants submit that an additional 403 days of Office delay should be included, under 37 C.F.R. 1.702(b), in calculating the total Patent Term Adjustment. Accordingly, the total calculation of Patent Term Adjustment is as follows: Office delay under 37 CFR 1.702(a) is 596 days; Office Delay under 37 CFR 1.702(b) is 403 days; and Applicant delay under 37 CFR 1.704(c) is: $92+92=184$ days; adjustment: $(596+403-184) = 815$ days.

Applicants respectfully request that the Patent Term Adjustment be increased from 412 days, as reported on the Determination of Patent Term Adjustment under 35 U.S.C. 154 (b), to **815 days**.

In addition to the foregoing, a Terminal Disclaimer was filed on September 5, 2008 directed to USSN 10/843,033, USSN 11/351,185 and USSN 11/364,964.

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Applicant: Dotan *et al.*

If the Office would like to discuss any aspect of this filing, the Office representative assigned to process this request is welcome to call the undersigned attorneys. Applicants believe no additional fees are due as the Office acknowledged the submission of the \$200.00 fee set forth in 37 C.F.R. §1.18(e) in the Decision mailed August 13, 2009 by the Office of Petitions. A copy of the Decision is attached. However, the Office is authorized to charge such fee, or credit any overpayment in fees to Deposit Account No. **50-0311**, Customer Number **30623**, Attorney Docket No. 25681-502 P.

Respectfully submitted,



Ingrid A. Beattie, Reg. No. 42,306
Attorney for Applicants
c/o MINTZ, LEVIN
Tel: (617) 542-6000
Fax: (617) 542-2241
Customer No.: 30623

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